

Federal Court Denies Recovery for Landfill Closure Costs Under CERCLA and New Jersey Spill Act

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A recent decision by the United States District Court held that landfill closure costs incurred by a private party were ineligible for recovery under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the New Jersey Spill Compensation and Control Act (the Spill Act).

The litigation in *Strategic Environmental Partners, LLC v. State Department of Environmental Protection* involved a dormant municipal landfill purchased by the plaintiff as part of a plan to construct and operate a solar farm on the property. Shortly after the purchase, the plaintiff negotiated an Administrative Consent Order (ACO) with the New Jersey Department of Environmental Protection (NJDEP) in which it agreed to “close” and “cap” the landfill pursuant to the New Jersey Solid Waste Management Act, which governs closure of municipal landfills.

After incurring soil sampling and other costs in connection with the preparation of a closure plan, the plaintiff filed a complaint in the United States District Court seeking reimbursement under CERCLA and the Spill Act of those costs from a long list of municipalities and companies whose wastes had been disposed in the landfill.

With respect to the CERCLA claim, the District Court noted that the plaintiff had to provide “sufficient evidence that it incurred necessary response costs in connection with the release, or threatened release of hazardous substances at the Landfill.” According to the District Court, the fact that closure-related costs were incurred pursuant to an ACO requiring closure under the state Solid Waste Management Act was not sufficient to establish that the costs were necessary for the performance of a “remedial action” under CERCLA. The plaintiff’s failure to produce other evidence supporting an intent “to remediate the Landfill due to CERCLA concerns” required dismissal of the claim.

With respect to the Spill Act, the District Court cited a recent New Jersey Supreme Court decision for the proposition that “a private party who enters into a remediation agreement with the NJDEP pursuant to the Spill Act [is allowed] to assert a private right of action and seek contribution costs for its removal of hazardous discharge.” The District Court observed that the ACO was not a remediation agreement under the Spill Act and concluded the ACO was therefore insufficient to give the plaintiff a private right of action under the Spill Act.

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The rationale offered by the District Court for its dismissal of the Spill Act claim appears to be a departure from existing state law. Although the New Jersey Supreme Court decision cited by the District Court states that a private party that enters into a remediation agreement under the Spill Act may pursue a private contribution action, it does not state or hold that the remediation agreement is a prerequisite for such a claim. Neither the language of the Spill Act nor New Jersey case law purports to restrict eligibility for Spill Act contribution claims to parties who have entered into a remediation agreement with the NJDEP.

Please contact the author, Daniel Flynn, with any questions regarding the information discussed in this Alert.